



U.S. Department of
Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

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Washington, D.C. 20590

March 27, 2000

MEMORANDUM FOR ALL DEPARTMENT MANAGERS AND SUPERVISORS

FROM: NANCY E. MCFADDEN *Nancy E. McFadden*
SUBJECT: SECTION 501 OF THE REHABILITATION ACT AND
AFFIRMATIVE ACTION FOR EMPLOYEES AND
APPLICANTS WITH DISABILITIES

I. Background

In August 1999, I met with representatives from two of the disability groups at the Department of Transportation on the issue of affirmative action for persons with disabilities. On October 16, 1999, President Clinton issued a Memorandum to the Heads of Executive Departments and Agencies, highlighting this Administration's continuing dedication to increasing employment opportunities for persons with disabilities. As one of the action items, the President committed that the Federal Government should "lead by example" as a "model employer" of individuals with disabilities. To that end, the President released two new documents from the Office of Personnel Management: "Accessing Opportunity," a plan for employing persons with disabilities in the federal workforce and a companion "Employment Guide." Both of these important publications can be found on the OPM website, "www.opm.gov." In light of all the foregoing, I want to take this opportunity to remind all Department managers and supervisors of our ongoing responsibilities under Section 501 of the Rehabilitation Act.

II. Section 501 of the Rehabilitation Act

Section 501 of the Rehabilitation Act requires that federal executive agencies develop affirmative action plans "for the hiring, placement, and advancement of individuals with disabilities." 29 U.S.C. section 791(b) (1999). Section 501 and other laws additionally prohibit disability discrimination in employment and require the federal government to make "reasonable accommodation" for applicants and employees who have physical or mental disabilities. Section 501 is part of a comprehensive Act which seeks to end disability discrimination and to promote employment opportunities for disabled persons. To that end, Congress explicitly expressed its desire to "ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities." 29 U.S.C. section 701(b)(2) (1999). Thus, the Rehabilitation Act contains twin goals: anti-discrimination and affirmative employment efforts. The EEOC's regulations reflect this Congressional intent as well: in addition to prohibiting federal agencies in their role as employer from discriminating based on disability, the federal government is charged with

becoming a "model employer" of individuals with disabilities. Federal employers, then, possess even a greater responsibility than private employers or federal grantees to ensure employment opportunities for persons with disabilities.

EEOC has issued three directives which address federal sector affirmative employment: MD 712, "Comprehensive Affirmative Action Programs for Hiring, Placement, and Advancement of Handicapped Individuals" (1983); MD 713, "Affirmative Action for Hiring, Placement, and Advancement of Individuals with Handicaps" (1987); and MD 714, "Instructions for the Development and Submission of Federal Affirmative Action Plans" (1988) (as applied to minorities and women).

In general, MD 712 and 713 provide instructions, guidance, and procedures for, inter alia, the following objectives for persons with disabilities:

- Ensuring equitable opportunities for hiring, training, and advancement
- Participation in upward mobility, merit promotion, apprenticeship, student employment, cooperative education, and other development and advancement programs
- Ongoing recruitment efforts
- Facility accessibility
- Reasonable accommodation
- Maintaining an internal data collection system for program assessment and planning
- Reporting affirmative employment goals and accomplishments to EEOC
- Delegating appropriate authority to direct and accomplish program efforts
- Additional objectives tailored to agency mission

III. Attaining these Objectives

I believe that we at the Department will best meet our obligations under this law through the individual commitment of each supervisor and manager to seek out and act upon opportunities to recruit, hire, train, and promote qualified individuals who have a physical or mental disability. Under the OPM framework, we should be actively looking for appropriate situations to accomplish these goals. Further, we want to seek out and reward the best practices of those supervisors and managers who excel at meeting these federal statutory obligations. OPM too, will be looking to identify, collect, and share these best practices by federal employers.

If each one of us strives to do our best in this area, our collective accomplishment will be limitless, for our successes here will compound. If you require any additional information, please contact Nancy Dunham, Senior Attorney-Advisor, Civil Rights Law, at 202-366-8072.